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The Law of Homicide by Roy Moreland

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an idea of the value of Mr. Millar's work may be gained from a glance at the chapter headings. The field of civil procedure at the trial level is covered like a blanket. Commencement of suit, joinder, cross-claims, pleading, discovery, pre-trial, all motions, trials, judgment, execution—all these things, and more, are covered. And the coverage is enlightening, interesting and sound.

This book is the eighth in the Judicial Administration Series. It maintains the high standards of that series.

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THE LAW OF HOMICIDE. By Roy Moreland. Indianapolis: The Bobbs-Merrill Company, Inc., 1952. Pp. viii, 338. \$7.50.

Anyone who reads and studies Professor Moreland's most recent contribution in the field of the law of homicide is instantly impressed with the depth and quality of his research. Tracing and following the tangle of threads, some firm and crystallized, others obscure, that make up this branch of Criminal Law, and analyzing each thread in terms of origin, judicial development, treatment by scholars, with a final testing of each thread in terms of soundness as a basis for practical court decision today is a formidable task. Professor Moreland has met this challenge squarely and capably.

While following the "usual line of presentation" in the analyses of murder and manslaughter in this book which is "fundamentally an orthodox study of the law of homicide", the author quickly cuts through traditional terminology and classification and strikes at the heart of the particular phase of the subject under consideration. Professor Moreland does not purport to record in readable fashion only what "the law is", although the reader looking for leading and pertinent cases can find them in detail; he does not attempt to give us the "jurisprudence" of the law of homicide, although here again the philosophers and legal scholars who have influenced the development of his subject are not neglected. What the author has done is to give a thorough, penetrating treatment of the whole law, considering each factor that bears on the given point. The leading case decisions, both British and American, are discussed and criticized. Recommendations are found throughout this study, but the ultimate thinking of the author is embodied in a proposed homicide statute which based on

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his analysis and evaluation in preceding chapters, is tailor-made to "do the job" which the current state legislation and court decisions do not do. Professor Moreland is specific in his references, and on a comparative basis, classifies the approach of each state separately.

The real contribution of this book, I think, lies not so much in the completeness and thoroughness with which each phase of the law of homicide is considered, but rather in the forthright and refreshing way in which the usual "definition" and case "application" is presented. In this regard, it is apparent to the reader that Professor Moreland believes that much of the traditional terminology and phraseology of the law of homicide impedes rather than contributes to a fair determination of issues. I suspect that he feels rather deeply about this. Yet, in spite of the excellent case presented that such words and phrases of art as "mens rea", "malice aforethought", and "malum in se" as well as the "unlawful act" doctrine, as examples, all comfortably traditional and accepted, should be thrown out of the modern law, Professor Moreland handles himself with admirable restraint. He suggests no new abstract or metaphysical concepts; rather he builds his entire study on a solid rock of practicability. He starts with the customary definition, and the pertinent cases, and then subjects the structure to a critical eye. If little is left of the original when he finishes with it, the reason lies not in the application of a new "approach to law", but rather in the fact that the law as we know it contains useless and sometimes harmful vestiges, or that the reason underlying the original pronouncement has disappeared, or that the original rule has been misunderstood or has been distorted in centuries of application. Professor Moreland accepts nothing as valid purely because it has been said before, but on the other hand, he uses what has been said before as a basis for recommending what, in his opinion, is a better statement of the rule and its limits, or an evaluation of the rule. This approach makes his study useful to the legislature, to the practicing Bar and Bench, as well as to Law School students.

When the author states in the preface that "the analyses of murder and manslaughter follow the usual lines of presentation" he refers to the fact that the breakdown of each chapter revolves around the usual functional classifications of homicide such as "heat of passion" or "provocation" or "implied malice". The writer personally thinks his approach to the whole problem of manslaughter is particularly well done. He prefaces the chapters dealing with the customary classification of manslaughter elements with a text discussion as to why the entire problem of this crime should be reexamined. As he says in this connection: "The unsatisfactory analysis of common law manslaughter

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has quite naturally carried over into the statutory law relating to the offense and in the court's interpretation of it. No material relief can be expected until there is a fundamental reexamination of the offense and a determination of the fundamental principles which support, or should support, the crime." He then proceeds to break down the crime of manslaughter into three functional classifications without the use of the accepted words of art. Here again, the delicate restraint used is evident. Professor Moreland realizes that a substitution of new words for old is not the answer. Those fundamentals such as "criminal negligence" he accepts. What he does is examine the old fundamentals in the light of the real basic principles underlying their use. With reference to "criminal negligence on the manslaughter level", for example, he believes that the search of the courts to find the higher degree of negligence necessary for criminal actions through the use of certain "vivid adjectives" connected with the word "negligence" as "gross, criminal, wanton", are, in Professor Moreland's own words "formless, without substance, they offer small relief." He recommends instead, a formula for criminal negligence which is taken from the successful workable technique used in civil negligence cases. He weaves into this formula the special considerations necessary to meet the higher standard of due care violated in criminal actions. Realistically again, he recognizes that any formula is subject to criticism, but he suggests that the use of his formula will isolate in bold relief the weakness and lack of substance of the current standards of "gross, wanton," and the others. In his words, "The abstract statement of a formula is only the first step in a long process." I agree, but the importance of the step in clearing the atmosphere cannot be underestimated in terms of clarity of principles to be applied in a given case. Where Professor Moreland modestly calls his suggested principles a "first step" I would call them an opening wedge. His repudiation of the "unlawful act" doctrine which he traces to Bracton is also of unusual interest. He would substitute a functional standard of "the degree of danger in the defendant's conduct" rather than in the lawfulness or unlawfulness of the defendant's conduct.

Moreland's "Law of Homicide", with its many facets, its clear explanation of current law, its happy blending of historical and analytical jurisprudence with a sprinkling of realism, its down to earth recommendations both common law and statutory, should not be overlooked. I commend this book to all students of the law whether they be teachers, practitioners, Judges, or members of a legislative body.

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